

EX PARTE OR LATE FILED

**HOGAN & HARTSON**  
L.L.P.

**ORIGINAL**

LINDA L. OLIVER  
PARTNER  
DIRECT DIAL (202) 637-6527

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

September 28, 1999

**RECEIVED**

SEP 28 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S. W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication Regarding the  
SBC/Ameritech Merger Application, CC Docket No. 98-141**

Dear Ms. Salas:

Yesterday, on behalf of the Competitive Telecommunications Association ("CompTel"), the undersigned of Hogan and Hartson L.L.P., and Carol Ann Bischoff, Executive Vice President, CompTel, met with Kyle Dixon, Legal Advisor to Commissioner Michael Powell, regarding the pending merger application of SBC and Ameritech.

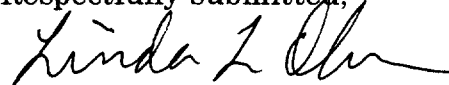
The purpose of the meeting was to discuss CompTel's position on the proposed merger, including CompTel's views on the proposed conditions to the merger submitted by SBC and Ameritech on July 1 (and later revised). The points made in CompTel's July 19 comments, in the attached August 25, 1999, ex parte letter, and in the attached handout, were discussed at the meetings.

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HOGAN & HARTSON L.L.P.  
Ms. Magalie R. Salas  
September 28, 1999  
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I have hereby submitted two copies of this notice to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided). Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda L. Oliver".

Linda L. Oliver  
Counsel for the Competitive  
Telecommunications Association

Enclosures

cc: Kyle Dixon

HOGAN & HARTSON L.L.P.

Ms. Magalie R. Salas

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bcc: Carol Ann Bischoff

**HOGAN & HARTSON**  
**LLP.**

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August 25 1999

***BY HAND DELIVERY***

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445 Twelfth Street, S. W.  
Washington, D.C. 20554

**Re: Notice of Ex Parte Communication Regarding the  
SBC/Ameritech Merger Application, CC Docket No. 98-141**

Dear Ms. Salas:

Yesterday, on behalf of the Competitive Telecommunications Association ("CompTel"), the undersigned of Hogan and Hartson L.L.P., and Carol Ann Bischoff, Executive Vice President, CompTel, met separately with John E. Ingle and Jeffrey S. Lanning of the General Counsel's Office and with Linda Kinney, Legal Advisor to Commissioner Susan Ness, regarding the pending merger application of SBC and Ameritech.

The purpose of the meetings was to discuss CompTel's position on the proposed merger, including CompTel's views on the proposed conditions to the merger submitted by SBC and Ameritech on July 1. The points made in CompTel's July 19 comments, and in the attached handout, were discussed at the meetings.

In addition, CompTel emphasized that a number of the proposed conditions are unlawful and should be revised to conform with the requirements of the 1996 Act and the Commission's rules. These conditions include the limitation on availability of network element combinations (the "UNE platform"), restrictions on the use of discounted loops; and limitations on the availability of discounted

wholesale rates. In general, these "promotional" offerings are available only to provide services to residential customers, and only if those services are not advanced services.

These provisions, first, are unlawfully discriminatory in violation of Section 251(c)(3) of the Act and Sections 51.313(a) and 51.319 of the Commission's rules, because they draw unlawful distinctions among carriers based on the customers they intend to serve and the types of services they intend to provide. 47 U.S.C. § 251(c)(3); 47 C.F.R. §§ 51.313(a), 51.319. Second, the conditions impose unlawful restrictions on requesting carriers' use of unbundled network elements, in violation of Section 251(c)(3) of the Act and Sections 51.309(a) and 51.307(c). 47 C.F.R. §§ 51.309(a), 51.307(c). Third, the discounted loop rate violates the UNE pricing provisions of Section 251(d)(1) of the Act, which requires that unbundled network element rates be both based on cost *and* nondiscriminatory. 47 U.S.C. § 251(d)(1)(a), (b). Differences in loop rates that are not based on cost are by discriminatory in violation of the Act.

In addition, the restrictions on the availability on UNE combinations violate the Act, as interpreted by the Supreme Court in AT&T v. Iowa Utilities Board, \_\_\_ U.S. \_\_\_, 119 S.Ct. 721 (1999), and the FCC's rule regarding access to combinations of network elements, 47 U.S.C. § 315(b). Under the proposed condition, UNE combinations are available *only if* the requesting carrier provides residential POTS or BRI-ISDN services. Such a restriction is unlawful.

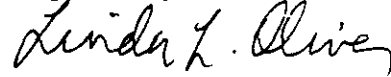
CompTel also pointed out that the Commission should not reach a determination in this merger case regarding whether the advanced services separate affiliate proposed by SBC/Ameritech should be considered a "successor or assign" for purposes of Sections 3(4)(a) or 251(h) of the Act, 47 U.S.C. §§ 153(4)(a), 251(h). This question should be decided on the basis of a complete record in a proceeding designed to address this issue -- either the Advanced Services proceeding (CC Docket No. 98-147) or the CompTel Section 251(h) petition (CC Docket No. 98-39).

Each of the above points is discussed more fully in CompTel's July 19 comments.

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Respectfully submitted,

A handwritten signature in cursive script that reads "Linda L. Oliver".

Linda L. Oliver  
Counsel for the Competitive  
Telecommunications Association

Enclosures

cc: John Ingle  
Jeffrey Lanning  
Linda Kinney

## **Major Deficiencies in Proposed Conditions on SBC/Ameritech Merger Application**

- Unlawful and anticompetitive limitations on access to combinations of network elements (UNE-platform).
- Discriminatory restrictions limiting the availability of discounted loop price.
- Weak separate affiliate structure for advanced services, which permits substantial joint activity, sharing, and cross-subsidization.
- No defined structure of clear relationships between SBC/Ameritech's ILEC affiliates and its national CLEC subsidiary, the National Local Company (NatLoCo).
- Unlawful and inappropriate limitations on DSL line-sharing.
- Failure of performance standards penalty payments to go to the harmed parties: the competitive local exchange carriers competing with SBC/Ameritech.

In addition to strengthening the proposed conditions to address these and other deficiencies, the Commission should also make explicit that these conditions are not relevant to, nor do they prejudice, action by the FCC in other rulemakings (such as the network element remand, DSL line-sharing, advanced services separate affiliate, and Section 271 proceedings).